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A Yes, we do.

Q And a service territory that has been approved by the Commission?

A Yes, we do.

Q And does that tariff not hold Brooks out to offer the service contained in that tariff to the customers within that service territory as approved by the Commission?

A It does, but the question is at what time. I would be happy to address that at some length if you would like to discuss it. But our view is it doesn't require us to hold ourselves out immediately at this point.

Q Unlike Southwestern Bell. When they file a tariff, the service has to be available.

A Well, Southwestern Bell is in a little bit different circumstance. it is an established company that has its territory established under a monopoly. We are a new company. We have indicated all along that we do not intend to provide service on a resale basis to any significant extent. If we were to try to get into residential service on any broad scale immediately, we would have to do it on a resale basis because we don't have the availability of what is our preferred method of operation, the unbundled loop availability.

Q I was asking about the method that you used. Will you offer local exchange service as contained in your tariffs that have been approved by the Commission to individuals who reside

1 within the service territory that you sought authority to
2 provide service to.

3 A We will, but the method is important from our aspect
4 because it dictates the timing when we will be able to do that.

5 Q You may then reject a customer's request for local service?

6 A We will not process applications for residential service at
7 this point.

8 Q Even on a resale basis?

9 A Even on a resale basis; that is correct.

10 Q Is that made clear in your tariffs?

11 A I don't know that-- Well, there is a provision in the
12 tariff I think generally that talks about "subject to the
13 availability of appropriate facilities and services."

14 MR. TOPPINS: Nothing further.

15 THE COURT: Any other questions. Thank you, Mr.
16 cadieux, you may step down.

17 MR. GIST: That's all we have, Your Honor.

18 THE COURT: Thank you. Ms. Johns?

19 MS. JOHNS: Thank you, Your Honor. I will try to be
20 brief as well.

21 As you may be aware, Cox is certificated to provide local
22 exchange and exchange access service in Oklahoma. To that end
23 we filed a request for intervention with Southwestern Bell and
24 we have been negotiating with them for the last few months.

25 Just last week we filed an interconnection agreement with

1 Southwestern Bell; however, before that time we had filed a
2 Petition for Arbitration. That has been withdrawn effective
3 today--or we have requested to have it withdrawn.

4 Because we were in the midst of our interconnection
5 negotiations as this proceeding was heating up, we felt
6 constrained not to provide a witness in this proceeding.

7 But although our interconnection agreement has been executed at
8 this point, it has not yet been filed with the Commission. We
9 don't think that the Cox interconnection agreement has any
10 bearing on this proceeding at this point because it hasn't been
11 approved by the Commission. The Commission hasn't determined
12 whether the rates contained in it are cost-based rates. We
13 don't think that it satisfies Track "A".

14 I would also like to just briefly state that Cox supports
15 the comments of the parties who have spoken before us with
16 respect to the Track "A"/Track "B" dichotomy, and the need for
17 Southwestern Bell to proceed under Track "A".

18 I think that most of the comments that I was going to make
19 have been adequately made by other counsel.

20 Thank you.

21 THE COURT: Thank you, Ms. Johns. Mr. Moon.

22 MR. MOON: Thank you, Your Honor.

23 Just for the record, I am Mickey Moon, Assistant Attorney
24 General for the Oklahoma Attorney General Drew Edmondson.

25 May it please the Court, I would like to just briefly

1 summarize the argument I am going to make before I get to the
2 substance of the argument. Briefly, under the Federal
3 Telecommunications Act, when Southwestern Bell files an
4 Application with the FCC for seeking interLATA authority, this
5 Commission is required to inform the FCC as to whether
6 Southwestern Bell has complied with Section 271(c). But this
7 Section 271(c) requirement that the Commission must consider is
8 only what is required at a minimum. The Act does not prohibit
9 the state, the Commission from considering other factors that
10 may be relevant in making their determination and from advising
11 or recommending basing its recommendation to the FCC on such
12 other factors. Those 271(c) requirements are only minimal
13 requirements that are not the totality of the relevant criteria.

14 Section 271(c) itself contains in simplified terms two
15 tests, both of which must be satisfied by Southwestern Bell by
16 substantial evidence in the record under Oklahoma law.

17 The first test, which is a threshold test, is met when the
18 requirements of either Track "A" or Track "B" are met.
19 Southwestern Bell in this case is currently locked in Track "A"
20 and it meets the requirements of this threshold Track "A" test.

21 Your Honor, I have an exhibit which I am not going to enter
22 into the record, but it is a chart that I can use to reference
23 to better convey my argument.

24 This list is the Track "A" threshold requirements before
25 you even get to the competitive checklist whether you looking a

1 statement of general terms and conditions or interconnection
2 agreements. This is what they must pass. These elements. Each
3 one of them. This is directly from the language of the Track
4 "A" of the Federal Telecommunications Act. I will read it into
5 the record.

6 Southwestern Bell passes or meets the requirements of the
7 Track "A" threshold test only if:

8 (1) Southwestern Bell has entered into one or more binding,
9 Commission approved agreements with specified terms and
10 conditions;

11 (2) Southwestern Bell is providing access and
12 interconnection to a competitor pursuant to such agreement or
13 agreements;

14 (3) That competitor is also providing local exchange
15 service to both business and residential subscribers; and

16 (4) The local exchange service provided by the competitor
17 to both business and residential subscribers must be provided
18 either exclusively or at least predominately over the
19 competitors own facilities.

20 Southwestern Bell not only failed to carry its burden of
21 proof that it passes this threshold test, but based upon, in the
22 Attorney General's view, the undisputed facts in the record, it
23 is clear that Southwestern Bell cannot pass this threshold test.
24 Yet even if we ignore this threshold test, continuing on there
25 would be a fifth test, the competitive checklist, the

1 requirements of that. If we went directly there, again
2 Southwestern Bell would fail that test and inter LATA authority
3 would be denied.

4 Before considering this competitive checklist, those
5 requirements, I want to stay with this threshold test because I
6 don't think we even get past this threshold test to consider the
7 checklist.

8 As the Attorney General stated in his initial comments,
9 there are two and only two roads available to pass this
10 threshold test, the Track "A" road or the Track "B" road. But
11 whichever road is taken, each road is clearly a single lane
12 road. And Southwestern Bell, having started down a particular
13 road, cannot change lanes at a whim just to get around one of
14 these speed bumps that Congress put in the Federal
15 Communications Act.

16 Southwestern Bell started down the Track "A" road. As soon
17 as it received a request for access and interconnection from a
18 competitor intending to offer facilities-based local exchange
19 service--and to date Southwestern Bell has received requests for
20 access and interconnection from those competitors with the most
21 viable potential to be facilities-based competitors to
22 Southeastern Bell, namely AT&T, Brooks Fiber, and Cox, to name
23 a few.

24 Except for the specific passing lane, which I will get to
25 in a minute, Southwestern Bell cannot change lanes but rather it

1 must meet each of the elements on this Track "A" lane.

2 Let's see how they fair in Track "A" compared to these
3 elements.

4 The first element or speed bump, that Southwestern Bell has
5 entered into one or more binding, Commission approved
6 agreements, I think there is no argument that Southwestern Bell
7 has done that with several interconnection agreements.

8 The second one, that Southwestern Bell is providing access
9 and interconnection, it is a little more vague because providing
10 such access and interconnection, you can say arguably is being
11 done with Brooks Fiber today. This No. 2 element of providing
12 access and interconnection, at the moment I am ignoring the
13 checklist requirements and am just in general looking at the
14 provision of access and interconnection.

15 The third one that the competitor is also providing a local
16 exchange service to business and residential subscribers, after
17 No. 1, the only vehicle that they can travel down this road,
18 Track "A", is the Brooks Fiber interconnection agreement. But,
19 as I said, that is arguable. So, No. 3, Brooks Fiber, they are
20 arguably providing local exchange service to both business and
21 residential subscribers.

22 Now the fourth speed bump on this road that they are
23 traveling in this vehicle called the Brooks Fiber agreement is
24 where they hit a road block. The local exchange service
25 provided by Brooks Fiber must be to both business and

1 residential subscribers and must be provided either exclusively
2 or predominately over Brooks' own facilities. And that is
3 clearly not the case, as the witness for Brooks Fiber
4 testified. Residential service is clearly on a resale basis.

5 As was pointed out in the Conference Report that was
6 submitted when this Bill, which later became the Federal
7 Communications Act of 1996 was passed, stated--or the authors of
8 that Report stated that this requirement of a facilities-based
9 competitor who was actually providing service to residential and
10 business subscribers in an integral requirement because it is
11 the tangible affirmation that local exchange is indeed open
12 completion. The Conference Report added that the requirement
13 that a Bell Operating Company is providing access and
14 interconnection means that the competitor must actually be
15 operational.

16 Now the Federal Telecommunications Act requires
17 Southwestern Bell to meet each one of these speed bumps. Until
18 it does, that speed bump becomes a road block prohibiting
19 further travel down that road and, for that matter, making
20 further review by this Commission unnecessary.

21 But as I mentioned a minute ago, the Telecommunications Act
22 provides for a specific passing lane around these first four
23 speed bumps in specific and identified situations. These are
24 the situations in which Southwestern Bell can pass around those
25 speed bumps on a Track "A" road, get into the passing lane and

1 pursue their intraLATA authority through Track "B". And it
2 lists the three situations through which they can do that. And
3 there is only three.

4 The first situation where it may do that is as of
5 December 8, 1996, no competitor has requested interconnection
6 and access from Southwestern Bell to provide local exchange
7 service exclusively or at least predominately over its own
8 facility. AT&T has requested just such interconnection, as had
9 Brooks Fiber prior to December 8, 1996. So clearly that first
10 situation is not applicable here.

11 The second situation in which they can go down Track "B",
12 such interconnection and access has been requested, but the
13 competitor making such request has failed to negotiate in good
14 faith. There is no evidence in the record. The Attorney
15 General is not aware of any failure on the part of any of the
16 competitive providers of local exchange service of a failure to
17 negotiate in good faith, nor is there any evidence in the record
18 presented by Southwestern Bell. So clearly the second situation
19 has not been met.

20 The third situation in which they can go down Track "B" is
21 when such interconnection and access has been requested but the
22 competitor making such request has violated the terms of its
23 implementation schedule within a reasonable period of time.
24 Again, there is no evidence in the record that this has
25 occurred. The Attorney General has no reason to believe that

1 this is the situation. So No. 3, the final and last situation
2 in which Southwestern Bell can receive Track "B" authority is
3 foreclosed.

4 That leaves Track "A". Southwestern Bell cannot avail
5 itself of this passing lane at this time. Unless and until this
6 passing lane becomes available, Southwestern Bell must travel
7 down the Track "A" road in the only vehicle allowed under the
8 Federal Telecommunications Act on the Track "A" road, approved
9 interconnection agreements. With the Brooks Fiber agreement
10 being the only legitimate vehicle at present and which is
11 currently stalled at Roadblock No. 4, Track "A" threshold
12 requirements have not been satisfied.

13 Southwestern Bell's Statement of Terms and Conditions is
14 the proper vehicle only on Track "B" passing lane. Track "B" is
15 not available; therefore, Southwestern Bell's Statement of
16 Generally Available Terms and Conditions is not relevant in this
17 proceeding. It should not even be considered for purposes of
18 the relief Southwestern Bell is seeking.

19 Southwestern Bell's position, however, is that if it cannot
20 complete its journey down Track "A", down the Track "A" road for
21 any reason--those are the words they use, "for any reason"--then
22 it is entitled to use the Track "B" passing lane. But this
23 position has absolutely no support in the language of the Act or
24 its legislative history.

25 Track "B" is not an automatic default that a Bell Company

1 can just switch over to whenever it hits one of these speed
2 bumps that it can't seem to cross over. The Act sets forth the
3 only instance when Track "B" is available. And the legislative
4 history tells us why it would be available only in those
5 instances.

6 Getting to the competitive checklist. Assuming arguendo
7 that Southwestern Bell does pass this threshold test and they
8 were still on the Track "A" road and we are at the fifth speed
9 bump on Track "A", they must be providing access and
10 interconnection.

11 Southwestern Bell can meet the requirements of this test
12 only if Southwestern Bell is actually providing access and
13 interconnection to competitors pursuant to its approved
14 interconnection agreements who are, in turn, providing
15 facilities-based exchange services to both business and
16 residential subscribers. It does not pass if Southwestern Bell
17 is merely offering or holding out access and interconnection.
18 The legislative history is clear that the term "providing" means
19 actual operation by a competitor because actual operation is the
20 integral requirement of the checklist. That is the tangible
21 affirmation that local exchange is open to competition. And a
22 competitor is not operational merely because Southwestern Bell
23 is holding out access and interconnection. Southwestern Bell
24 must be providing access and interconnection before the
25 competitor can be operational.

1 What does providing access and interconnection mean?

2 It means Southwestern Bell must be providing all or each of the
3 fourteen competitive check list elements that constitute access
4 and interconnection, not merely offering such elements on a
5 take-it-or-leave-it basis.

6 Section 271(c)(2)(b) of the Act defines access and
7 interconnection to include those fourteen checklist items;
8 therefore, if interconnection must actually be being provided,
9 then what is included in access or interconnection must also
10 necessarily be being provided as well. That means that while
11 Congress did not expressly list competition as a requirement or
12 prerequisite in granting Southwestern Bell interLATA authority.

13 Although it clearly contemplated meaningful competition
14 before a Bell Operating Company can enter into the intraLATA
15 market, it isn't implicit when one considers the context in
16 which each and every one of those fourteen checklist points
17 could be satisfied or could be provided. That meaningful
18 competition is implicit in the checklist test and that
19 competitors actually be taking each of the checklist items that
20 Southwestern Bell is required to provide, is supported in at
21 least three ways. The first, reading the Federal
22 Telecommunications Act requires Southwestern Bell to provide
23 only those checklist items which have been requested by
24 competitors pursuant to an approved interconnection agreement
25 would give no effect to the idea of meaningful competition.

1 because in Oklahoma, assuming that Brooks Fiber had--and this
2 assumption is wrong, but assuming Brooks Fiber is getting all of
3 the access and interconnections elements that it has requested
4 and assuming that it has not requested all such access and
5 interconnection, then under that reasoning, on that basis that
6 would constitute enough competition, the competition envisioned
7 by the Federal Telecommunications Act. But in no sense would
8 the service be provided by Brooks Fiber be described as
9 meaningful competition.

10 The second basis on which you can support the idea or
11 proposition that competition is envisioned as a prerequisite,
12 meaningful competition is envisioned as a prerequisite to
13 allowing Southwestern Bell interLATA access, is that when you
14 look at the checklist items, the first thirteen items are
15 distinct from the fourteenth item in that the fourteenth and
16 last item regarding resale says that Bell Operating Companies
17 need only make that available and does not actually have to
18 provide. This is in recognition of the fact that Congress
19 recognized that resale, strictly resale, is not necessary to
20 have a meaningfully competitive market, local exchange market.
21 That is the only term that is distinguished from the first
22 thirteen. The first thirteen said under a Track "A" proceeding,
23 it must actually be provided. The only thing that is not
24 required to be provided, even under Track "A", is whether Track
25 "A" or Track "B" is resell. And you want to make that available

1 on their little dessert tray.

2 THE COURT: We have moved from hors d'oeuvres to
3 dessert.

4 MR. MOON: The third leg to stand on is the Federal
5 Telecommunications Act requires that the checklist be fully
6 implemented. This is the clear language of the Act is that each
7 and every checklist item must be provided and it elsewhere
8 states the checklist must be fully implemented.

9 I don't know how much clearer you can get to determining
10 the intent of the Federal Telecommunications Act. Each one of
11 those elements must be provided and, of course, there is no
12 evidence that they will be provided. All of the evidence points
13 to the fact that each one of them is not being provided. There
14 are some that have not been provided or the first two elements
15 are that they be nondiscriminatory and, based on Section 251
16 description of pricing there is no support to show that they
17 meet the first two elements of the checklist.

18 So based solely upon the Section 271(c) requirements of the
19 Act, Southwestern Bell fails the threshold test under Track "A".
20 Track "B", of course, is not available, since none of the
21 situations in which it would be applicable are available and;
22 therefore, the Statement of Terms and Conditions is irrelevant
23 to this proceeding.

24 But even if Southwestern Bell were allowed to proceed under
25 Track "A", it fails the competitive checklist requirements test

1 by its failure to provide those checklist items and not fully
2 implementing the checklist. Moreover, the meaningful
3 competition envisioned by the Federal Telecommunications Act has
4 not yet materialized. So allowing Southwestern Bell to have end
5 region interLATA authority would lead to the substantial
6 possibility that it could use its monopoly power in the local
7 market to impede the competition existing and envisioned under
8 the Act into interLATAa market. That was the test that is now
9 discontinued or is no longer effective MFJ and the reasoning for
10 the separation of the Bell Operating Companies out of the
11 intraLATA market. Of course the Act made the modified final
12 judgement no longer effective in this proceeding.

13 Still, the reasoning behind that requirement is still a
14 concern today because what led to divestiture then, those
15 circumstances, could easily arise again. And referring to the
16 chart that the Southwestern Bell Attorney presented today that
17 showed the increased prices for IXC services since, I believe,
18 1989 compared to the fact that the cost of those services have
19 continued to decline, Southwestern Bell can, of course, go in
20 the interLATA market and if what they say is true, offer lower
21 services. That would be good. And the Attorney General before
22 that. But the time has to be right, otherwise whatever short-
23 term gain that the consumers of Oklahoma and the rest of the
24 country would gain from allowing Southwestern Bell into the
25 intraLATA market at lower rates would, over the long term, be

1 detrimental to competition and to consumers because we could
2 easily end up in the same situation that we were with AT&T as
3 one prior to divestiture and we would have to start all over
4 again.

5 Finally, this Commission decision is not limited to a
6 consideration of only the Section 271(c) requirements. The
7 Federal Telecommunications Act sets forth only the minimum
8 factors that this Commission must consider. And Southwestern's
9 Bell's reference to Section 271(d)(4) as support that neither
10 this Commission nor the FCC can go beyond the checklist items is
11 really no support, because this interpretation of the
12 Telecommunications Act would render meaningless--first of all,
13 the latitude given to the Department of Justice in their review
14 and consultation with the FCC. They can review on any basis.
15 And FCC must give substantial weight to the DOJ's
16 recommendation. It would also render meaningless the FCC's
17 public interest authority to examine such intraLATA authority as
18 being in the best interest of the public.

19 Indeed, as stated in the Conference Report, the competitive
20 checklist is not intended to be a limitation on the
21 interconnection agreements, but rather what must be provided at
22 a minimum in an intraLATA application.

23 Thank you.

24 THE COURT: Thank you, sir. Southwestern Bell, final
25 comments?

1 MR. SCHLICK: I will try to be brief, Your Honor. I
2 think this is a good point to do something that is perhaps
3 dangerous; that is, go back to the statute. We have just heard
4 a long talk about tracks, speed bumps, passing lanes, but, if I
5 may, I would ask you to look at the wording of the statute and
6 let's see what is actually required.

7 Subsection 271(c)(1)(a). It requires that we have approved
8 agreements providing terms and conditions under which the Bell
9 Operating Company is providing access and interconnection to the
10 network facilities of one or more unaffiliated competing
11 providers of telephone exchange service to residential and
12 business subscribers.

13 Now the only issue that we seem to have here is whether
14 Brooks Fiber is in fact providing service to residential
15 subscribers. They are serving residences. I would think that
16 that would satisfy the statute, but if it doesn't, then per se
17 we have not had a request from such a provider and that means we
18 can flat out proceed under "B". We have such provider. If the
19 provider described in "A" as we have explained, if they are not
20 serving residences and we haven't received any requests, then we
21 can proceed under "B".

22 The second requirement of "A" if you should find that they
23 are--

24 THE COURT: I've got a problem with that. Just
25 because they are not providing it to residential? Whether they

1 are or not is a different question. But you are telling me that
2 just because somebody is not providing it to the residential or
3 to the business customer that you can go to Track "B"?

4 MR. SCHLICK: That is precisely what I am saying, Your
5 Honor. And the reason is the statute says--

6 THE COURT: Doesn't it go back to you offering it to
7 the provider, to the person who was providing first?

8 MR. SCHLICK: The condition of proceeding under "B"--

9 THE COURT: We are talking about-- You're talking
10 about apples and oranges.

11 MR. SCHLICK: No, Your Honor. That is why the such
12 provider language is the key here. And I explained what
13 Congress meant by that. It is exactly what is said in the
14 statute. We can proceed under B. If a Bell operating company
15 meets the requirements of this Subparagraph (b), "If after ten
16 months after the date of enactment"--we have passed that--"no
17 such provider" and I don't think there is any dispute on that,
18 refers to a provider described in Subparagraph (a). "...if no
19 such provider has requested the access to interconnection
20 described in Subparagraph (a) before the date ..." which is
21 three months before we filed our Application, since January 15.
22 Here, no such provider. No provider of services to business and
23 residences has made any request. There is none out there. And
24 that is exactly what the Conference Report, page 148 says. It
25 says, "The purpose of Track "B" is if no facilities-based

1 carrier seeks to enter the market." Facilities-based here
2 meaning serving businesses and residences.

3 So if they are not serving business and residences, we may
4 proceed under "B". Period.

5 Now there is a second condition under "A" if they meet that
6 first one. That is,--and I just want to correct the-- The
7 chart made by the Attorney General in fact misquotes this
8 provision and I think it is important to actually look at the
9 language.

10 We are now back in "A". "Such telephone exchange service
11 may be offered..." (The Attorney General's chart said
12 "provided." It's "offered.") "...by such competing providers
13 either exclusively over their own telephone exchange service
14 facilities or predominately over their own telephone service
15 exchange facilities in combination with the resale of
16 telecommunication services of another carrier."

17 Here we have the tariff filed by Brooks Fiber which offers
18 that service to businesses and residences. It offers it
19 exclusively over its own facilities. They may be using some
20 resale. They say they don't want to do that. But we have a
21 tariff.

22 Now this issue about whether or not I can actually take
23 service off of their tariff highlights the problem that we have
24 with interpretation under their view. They asked to come into
25 the market, and their request, no matter what they are actually

1 providing, prevents us from proceeding under "B". But they say,
2 We will actually sign up customers who are eligible under our
3 tariff at the point when we are ready. What that means is that
4 Southwestern Bell can't enter the long-distance business until
5 Brooks Fiber decides they are ready. And that is precisely the
6 problem we have here. If it is not Brooks Fiber, then it is
7 going to be AT&T or MCI or Sprint. But they are saying that our
8 entry depends on their decisions about serving local customers.
9 That is simply not what the statute says.

10 Just a couple of other things that I want to mention that
11 have come up here. AT&T mentioned some issues with regard to
12 co-location and local call forwarding requests of Brooks Fiber.
13 That is addressed in our pleadings. We don't think that there
14 is any issue of checklist compliance there. Besides, if there
15 were any real problem, this Commission would have heard about
16 it. It is more than passing strange that we are hearing about
17 this for the first time in a 271 proceeding, which is not the
18 proper place.

19 AT&T, their basic view is that we can't prove that the
20 checklist elements are available until they have been taken in
21 the appropriate quantity and quality. Well, that is just
22 another way of saying that we need to have a lot of requests, we
23 need to actually be sending a lot of gas through the pipeline.
24 That gas, Your Honor, is customers. What they are saying is
25 that we need lose a sufficient number of customers in order for

1 Southwestern Bell to get into long distance. Again, that is not
2 the requirement. We have to provide the interconnection and
3 network access under "A", or, under "B", regardless of entry,
4 regardless of the existence of even a single competitor, we have
5 to generally offer it.

6 Let's go through the checklist again. (c)(2), the question
7 is not have we fully implemented the checklist. That is not in
8 the statute. What the statute said is, are we either (a)(1)
9 providing access and interconnection in compliance with the
10 checklist, or generally offering access and interconnection
11 pursuant to a statement described in paragraph (1)(b). We are
12 doing both.

13 The implementation language which was cited comes from the
14 Conference Report. It is not in the statute. All that says is
15 that the requirement for providing access and interconnection
16 means that the competitor implemented the agreement. Here
17 Brooks Fiber is exchanging traffic with us and we have an
18 implemented agreement and the competitor is operational. They
19 are operational, Your Honor.

20 So we have satisfied "A", we believe, if this Court were to
21 find that they are serving residential customers. If you find
22 that they are not serving residential customers, we satisfy "B".

23 Rates have come up a couple of times. The argument is that
24 it may be okay that they are interim, but there hasn't been a
25 cost docket to find if they are cost based. Well, I simply

1 mention that it is my understanding that at the AT&T arbitration
2 proceeding it was agreed that we would bifurcate the proceeding;
3 that we would determine the rates under 252(d) and no proceeding
4 was necessary that they be found to be consistent with 252(d);
5 that we would do that separately from the cost proceeding. For
6 AT&T to now turn around and say that it is acceptable under the
7 statute to do it that way for the purpose of arbitration, but
8 not for the purposes of an STC or 271 application just doesn't
9 hold water. It is the same standard.

10 Arguments were made that OSS is not being used on a
11 commercial scale. Well, again, these folks just haven't asked.
12 It's there. It's available. It's ready. The systems are being
13 used today by Brooks retail personnel. We are just waiting for
14 them. And they are holding us out of long distance by their
15 local entry decisions. Again, that is not permitted under the
16 statute.

17 Public interest. We don't think much has been said on
18 that. We think it is very clear. But the argument was just
19 made that we might recreate the Bell system.

20 Your Honor, we are going to enter without a single long-
21 distance customer in this state. The way you sign up customers,
22 you offer better service or you do it at lower rates or you do
23 both. That is the way we intend to do it. We are fighting a
24 very large incumbent carriers. They are well established. If
25 they leave, someone else will buy their network and be there to

1 compete against us. We are going to operate according to FCC
2 rules and this Commission's oversight. The FCC has extensive
3 rules which are sufficient to address any cost shifting
4 discrimination, so we think that is amply addressed and it
5 really is no concern.

6 Every time a Bell company seeks to enter a market adjacent
7 to a local exchange these things arise. We have seen it in
8 cellular service. We have seen it in intraLATA toll. We have
9 seen it in information services. Every time we have asked to
10 enter a market these same objections have been made. In fact,
11 service goes up; prices go down; consumers are better off. That
12 is what we think is going to happen here, and we strongly urge
13 the support of our application.

14 Thank you.

15 THE COURT: Thank you. Mr. Gray, since it is your
16 Application, you get the final comment.

17 MR. GRAY: Your Honor, on behalf of the Commission
18 Staff, I would like to thank the parties for submitting
19 information to us. With the participation being among the
20 industry, there are a lot of things that the Commission Staff
21 has no access to that knowledge. We appreciate the parties
22 bringing it to us.

23 There is one matter. As Your Honor knows, the appeal
24 hearing is set for the 23rd of April in this Courtroom at 9:30
25 before the Commission. The Commission Staff reserves the right

1 to argue either for or against or part for and part against any
2 of the recommendations of the Administrative Law Judge.

3 THE COURT: I will do my best to accommodate.

4 MR. GRAY: I have nothing further.

5 MR. STAKEM: May I have a number for the late-filed
6 exhibit, please?

7 THE COURT: The late-filed exhibit will be No. 86.
8 That will be a summary of the changes. Exhibit No. 87 will
9 actually be the FCC filing.

10 MR. SCHLICK: Your Honor, counsel for AT&T has kindly
11 notified me that that the word "implemented" is found in the
12 statute. It is not found in the relevant provision for purposes
13 of this Commission's determination, which is (c)(2). It is
14 found in (d)(3). I hear chuckles, but, frankly, that's the
15 statue.

16 I would also point out that it is not found with respect to
17 the offering of access. There is no question. I believe that
18 everyone can agree under all provisions that providing access
19 and interconnection or offering it pursuant to an STC is what is
20 required with respect to the checklist.

21 MS. LaVALLE: And I would just say, Your Honor--

22 THE COURT: Is this going to be an additional long-
23 range argument--

24 MS. LaVALLE: Your Honor, I just think that we are
25 experiencing an extreme state of denial on the actual, literal

1 language.

2 THE COURT: Thank you. Any more clarifications for
3 the record?

4 I appreciate your time very much. We will go off the
5 record. I will return with a decision after a recess.

6 (Recess had.)

7 D E C I S I O N

8 THE COURT: Reopen the record please in PUD 970000064.

9 Based on the pleadings filed in this cause, accepting the
10 testimony in the record, the comments placed into this record by
11 Southwestern Bell--and, as we are all aware, I have made it
12 quite clear--the burden is on Southwestern Bell to prove the
13 case that is before us; and, of course, this is less of a case
14 and more of an investigation into whether the Commission should
15 allow Southwestern Bell to provide intraLATA services.

16 As you are quite aware from the cases heard here at the
17 Commission, I am very much in favor of promoting competition.
18 I feel it is very desirable to open the marketplaces as we have
19 and comments.attempted to do in many of the cases at the
20 Commission. It is also important to look at the public interest
21 in this area. In this matter I have checked the regulations and
22 the law and I note that the public interest that is to be served
23 in determined by the FCC. So I will let that part of this
24 matter go.

25 Southwestern Bell I believe in this filing does not meet